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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,676	05/09/2002	Kenneth George Brash	7383-72371	6912
22242 7590 10/01/2007 FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER HOLMAN, JOHN D	
			ART UNIT. 3643	PAPER NUMBER
			MAIL DATE 10/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/980,676	<b>Applicant(s)</b> BRASH, KENNETH GEORGE	
	<b>Examiner</b> John D. Holman	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 24-44 is/are pending in the application.
- 4a) Of the above claim(s) 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-27 and 40-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-28, 30-37, and 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smithyman (US 6047497) in view of Yates (US 5904909).

Regarding claim 24, Smithyman discloses an apparatus comprising a shipping container defining a fumigation chamber (44a-44c), a mobile fumigation means (10) having a fumigation inlet (50a-50c) coupled to the container (44a-44c), extraction means (52a-52c) coupled to the container (44a-44c), absorption means (68) coupled to the extraction means (52a-52c). See Smithyman figure 1 and column 4, lines 25-31. Smithyman discloses the containers as being areas on a vehicle such as a truck or railroad car. The claim differs from Smithyman in calling for a means for washing the absorption means. Yates discloses a means for washing an absorption means. See Yates column 5, lines 62-63. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Smithyman in view of the teachings of Yates to include a means for washing the absorption means for the purpose of decomposing the absorbed fumigant (column 5, lines 62-63).

Regarding claim 25, Smithyman as modified in claim 24 discloses an apparatus wherein the mobile fumigation means is defined by a shipping container. See Smithyman column 4, lines 26-31.

Regarding claim 26, Smithyman as modified in claim 24 discloses an apparatus wherein the fumigation chamber is a pair of shipping container positioned along side one another coupled to the fumigation means (10). See Smithyman figure 1.

Regarding claim 27, Smithyman as modified in claim 24 discloses an apparatus wherein the mobile fumigation means is defined by a partition wall in the shipping container separating the mobile fumigation means (10) and the fumigation chamber (44a-44c). See Smithyman figure 1.

Claim 28 differs from Smithyman as modified in claim 24 in calling for the absorption means to comprise activated carbon. Yates discloses an apparatus comprising activated carbon as an absorption means. See Yates column 2, lines 54-58. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Smithyman in view of the teachings of Yates to include activated carbon as the absorption means for the purpose of absorbing or retaining the fumigation agent (column 2, lines 54-58).

Regarding claim 30, Smithyman as modified in claim 24 discloses an apparatus wherein the mobile fumigation means incorporates a source of the fumigant (10) directly associated with a heating source (vaporizer). See Smithyman column 5, lines 1-9.

Regarding claim 31, Smithyman as modified in claim 24 discloses an apparatus wherein the fumigant inlet means (50a-50c) is adapted to detachably couple to a mobile source of the fumigant. See Smithyman figure 1.

Regarding claim 32, Smithyman as modified in claim 24 discloses an apparatus wherein the mobile fumigation means incorporates a system control box (38) and a system fumigant delivery pipes (40) and valves (30, 34) adapted in use to supply fumigant from a supply source (10) to the fumigation chamber (44a-44c). See Smithyman figure 1.

Regarding claim 33, Smithyman as modified in claim 32 discloses an apparatus wherein the fumigant inlet means (50a-50c) includes a dispersion pipe system located in the fumigation chamber (44a-44c). See Smithyman figure 1.

Regarding claim 34, Smithyman as modified in claim 24 discloses an apparatus wherein the fumigation chamber (44a-44c) contains a plurality of floor and wall-mounted pipes (50a-50c, 52a-52c) connected via a system of connectors to a fumigant sampling and detection meter unit (84a-84c). See Smithyman figure 1.

Regarding claim 35, Smithyman as modified in claim 32 discloses an apparatus wherein the system control box (38) contains a fumigant sampling and detection meter unit and power supply switches for mixing fans, exhaust fan, lights, gas heaters, and valve actuators. See Smithyman figure 1, and column 5, lines 60-67, and column 6, lines 1-13.

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Regarding claims 35 and 36, Smithyman as modified in claim 24 discloses an apparatus wherein the means for washing comprises a sodium thiosulphate for degrading methyl bromide. See Yates column 2, lines 54-61 and column 6, lines 1-7.

Regarding claim 40, Smithyman as modified in claim 25 discloses an apparatus wherein the fumigation chamber is a pair of shipping container positioned along side one another coupled to the fumigation means (10). See Smithyman figure 1.

Regarding claim 41, Smithyman as modified in claim 40 discloses an apparatus wherein the fumigant inlet means (50a-50c) is adapted to detachably couple to a mobile source of the fumigant. See Smithyman figure 1.

Regarding claim 42, Smithyman as modified in claim 41 discloses an apparatus wherein the mobile fumigation means incorporates a system control box (38) and a system fumigant delivery pipes (40) and valves (30, 34) adapted in use to supply fumigant from a supply source (10) to the fumigation chamber (44a-44c). See Smithyman figure 1.

Regarding claim 43, Smithyman as modified in claim 42 discloses an apparatus wherein the fumigant inlet means (50a-50c) includes a dispersion pipe system located in the fumigation chamber (44a-44c). See Smithyman figure 1.

Regarding claim 44, Smithyman as modified in claim 43 discloses an apparatus wherein the fumigation chamber (44a-44c) contains a plurality of floor and wall-mounted pipes (50a-50c, 52a-52c) connected via a system of connectors to a fumigant sampling and detection meter unit (84a-84c). See Smithyman figure 1.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smithyman (US 6047497) and Yates (US 5904909) as applied to claim 24 above, and further in view of McCurrie (US 1849194).

Claim 29 differs from Smithyman as modified in claim 24 in calling for the bed or floor to slide into and out of the fumigation chamber. McCurrie discloses a fumigation apparatus wherein the floor (11) slides into and out of the fumigation chamber (10). See McCurrie figure 1 and page 2, lines 68-74. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Smithyman in view of the teachings of McCurrie to include the floor to slide into and out of the fumigation chamber for the purpose of inserting the desired object into the fumigation chamber (page 2, lines 86-89).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

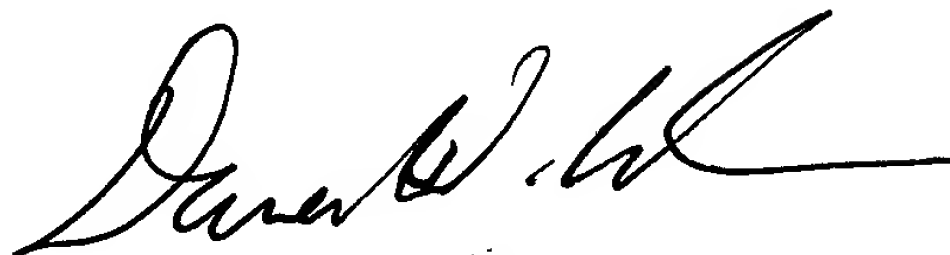
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Holman whose telephone number is 571 272-2754. The examiner can normally be reached on Monday through Friday 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JDH

  
**DARREN W. ARK**  
**PRIMARY EXAMINER**